

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KERRY ASHDOWN

Plaintiff(s),

-against-

EQUINOX incorporated as  
EQUINOX HOLDINGS, INC.,  
et al.

Defendant(s).

13 Civ. 1374 (HB)

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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DATE FILED: 4/25/13

**PROPOSED PRETRIAL  
SCHEDULING ORDER****APPEARANCES:**

Plaintiff(s) by:

Walker G. Harman, Jr.

The Harman Firm, PC

Defendant(s) by:

Lawrence S. Rosen

LaRocca Hornik Rosen Greenberg &amp; Blaha

**HAROLD BAER, Jr., District Judge:**

Do the parties consent to proceed before a United States Magistrate Judge for all purposes, pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73?

Yes    No ✓

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, after holding an initial pretrial conference on notice to all parties, it is hereby ordered that:

Except under circumstances agreed to by the Court:

1. This case is added to the March 2014 Trailing Trial Calendar.  
 Jury   . Non-Jury   . Estimated number of trial days is 5. Counsel should not make any other commitments during this month.

As a general rule, and for your information when filling this out prior to the PTC, keep in mind that all cases will be tried within a reasonable time from the date of this pretrial conference (e.g., 9 – 11 months) based on the complexity of the case. I will abide by your choice of month to try your case, assuming I deem it to be a reasonable time. Keep in mind the quid pro quo is that the month you choose, due to my trailing trial calendar format, will rarely if ever be changed.

2. No additional parties may be joined after May 15, 2013

New parties shall be bound by the deadlines included in this Pretrial Scheduling Order. If new parties are joined, the party joining them shall forward to them a copy of this Pretrial Scheduling Order and offer to provide them with access to all previously taken discovery. Should this pose a seemingly insurmountable problem, call Chambers.

3. No additional causes of action or defenses may be asserted after May 15, 2013.

4. **Discovery:** All discovery shall be commenced immediately, but for a statutory bar (e.g. PSLRA) or further Order of the Court, and will be completed by July 15, 2013. Any delays that threaten this timetable are to be brought immediately to the attention of the Court. As the Court rarely grants extensions, any delays or disputes in the taking of discovery should be reported to the Court immediately.

Where applicable, decisions with respect to disclosure and discovery of electronically stored information, along with privilege issues related to that information, shall be provided to the Court within 10 days following the signing of this Order by the Court.

5. **Motions:** The last day for fully-briefed motions (i.e., moving, opposition and reply papers) to be in Chambers is July 15, 2013. Either party may request (and will be given a date by Chambers) for oral argument. It is up to the parties, consistent with Federal and/or Local Rules, to ensure that each has sufficient time to brief their motions by the deadline.

In choosing the last date to submit fully briefed motions juxtaposed with your agreed-to trial month, keep in mind that the Court requires at least 60 days to decide dispositive motions.

6. **Expert testimony:** Disclosure of expert testimony, if any, will be made at least 45 days before the first day of the agreed to trial month. Evidence intended to contradict or rebut the subject matter of the expert testimony will be submitted within 21 calendar days after the disclosure made by the other party, subject only to further order of this Court.

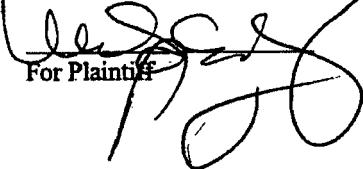
7. **Joint Pretrial Order:** A joint pretrial order may be requested when your trial date is set, and will typically need to be submitted to Chambers from 10 days to 2 weeks prior to trial. See my Individual Practices for details.

8. The law clerk assigned to this case is Jahn.

9. **Mediation:** Upon request to Chambers by either side, the Court will schedule and conduct a settlement conference and/or mediation. The Court will also, upon request, facilitate mediation under the Court Mediation Program or a settlement conference before your Magistrate Judge. In the case of a mediation to be conducted by the Court, all parties must bring their respective clients to the mediation. Keep in mind, closure, for the most part, is accomplished in direct proportion to how early in the litigation the mediation occurs. Any ADR procedure must occur within the framework of this order.

10. **Settlement/Discontinuance:** Whenever a case is resolved, the parties must submit an Order of Discontinuance, signed by all parties, before the case will be removed from the trial calendar. When the parties settle within forty-eight hours of trial or the filing of a dispositive motion, they must notify the Court immediately of such settlement, and fax to the Court no less than thirty-six hours prior to their planned appearance an Order of Discontinuance (copy attached), signed by all parties.

11. The parties' signatures below represent their understanding and agreement that this schedule is final and binding upon them unless the Court concludes that extraordinary circumstances warrant an extension with respect to one or more than one of the scheduled dates.

  
For Plaintiff

For Plaintiff

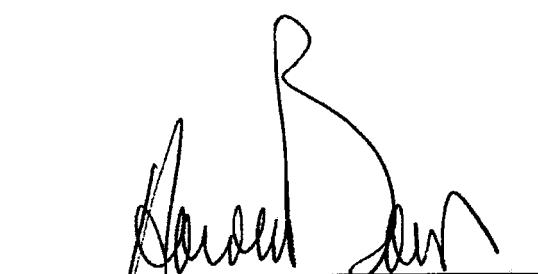
For Defendant

For Defendant

**SO ORDERED.**

DATED:

4/25/13  
New York, New York

  
HAROLD BAER, JR.  
United States District Judge

Rev. 10/23/12